

**JUVENILE JUSTICE IS NOT  
CHILD'S PLAY:**

**AVOIDING ETHICAL PITFALLS**

*Jill Mata, General Counsel  
Texas Juvenile Justice Department*

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**DECISION MAKERS**

**LAW ENFORCEMENT OFFICERS  
PROBATION OFFICERS  
PROSECUTORS  
DEFENDERS  
JUDGES**

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**CRITICAL DECISION POINTS**

**ARREST** *custody or release*  
**DETENTION INTAKE** *detain or release*  
**REFERRAL TO PROSECUTOR** *refer or divert*  
**PROSECUTOR INTAKE** *divert or charge*  
**CHARGING DECISIONS** *Indeterminate, Determinate & Certification*  
**DISPOSITION AGREEMENTS** *probation or TJJD Commitment*  
**PROBATION MODIFICATIONS** *continue or revoke*

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## PURPOSES OF TEXAS JUVENILE JUSTICE

*Sec. 51.01 Texas Family Code*

To provide for the protection of the public and public safety

- By promoting the concept of punishment for criminal acts
- To remove the taint, whenever possible of criminality from children committing certain unlawful acts; and
- To provide treatment, training, and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct.

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- To provide for the care, the protection, and the wholesome moral, mental, and physical development of children
- To protect the welfare of the community and to control the commission of unlawful act by children
- To achieve purposes in a family environment whenever possible, separating the child from parents only when necessary for the child's welfare or the interest of public safety, to give the child the care that should be provided by parents; and
- To provide a simple judicial procedure through which...the parties are assured a fair hearing and constitutional and other legal rights are recognized and reinforced.

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## PROSECUTORS

"It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done. They shall not suppress facts or secret witnesses capable of establishing the innocence of the accused."

*Texas Code of Criminal Procedure, Art. 2.01*

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**SPECIAL RESPONSIBILITIES OF A PROSECUTOR**

*Texas Disciplinary Rules of Professional Conduct , Rule 3.09* requires that a prosecutor shall:

- (a) refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause
- (b) refrain from conducting or assisting in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel

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- (c) not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pretrial, trial, or post-trial rights
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when a prosecutor is relieved of this responsibility by a protective order of the tribunal; and
- (e) exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.07.

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**A FEW QUICK NOTES REGARDING  
CERTIFICATION TO CRIMINAL COURT &  
DETERMINATE SENTENCES**

- Use quality evidence to support a request to transfer youth to criminal court or to prison
- Compare and contrast (therefore understand) Determinate Sentence law, procedures and outcomes
- Determinate Sentencing runs the risk of being used as back door to certification.

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### SPECIAL ISSUES FOR DEFENSE ATTORNEYS

Each county must have a **Juvenile** Indigent Defense Plan and meet TIDC requirements in order to be eligible for grant funds from the Commission-Family Code, Sec. 51.102 Code Crim. Procedure, Art. 26.04

Recognize the differences in qualifications and experiences that are necessary for appointment to cases in which:

- CINS or delinquent conduct and commitment to TJJD is not part of an authorized disposition; or
- Delinquent conduct and commitment to TJJD without a Determinate Sentence is an authorized disposition; or
- Determinate Sentence proceedings or Discretionary Transfer to criminal court proceedings have been initiated

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### UNIQUE JUVENILE RIGHTS *Impacting duties of the defense attorney-*

- Right to remain silent
- Right to have a lawyer present for testing and interviews
- Duty to determine the mental capacity of child client (for capacity as well as mental health)
- Role in disposition hearing and decision

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### PROBATION OFFICERS

- TAC, Title 37, Part 11, Chapter 341 sets general standards for Juvenile Probation Departments
- Rule §341.400 set out Duties of Certified Juvenile Probation Officers:
  - 1) recommending a disposition in formal court proceedings
  - 2) providing final approval of written social history reports
  - 3) acting as the primary supervising officer for court-ordered and deferred prosecution cases
  - 4) acting as the primary supervising officer in a collaborative supervision agreement under TFC §51.075

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5) developing and implementing case plans under Ch. 341  
6) conducting intake interviews and preliminary investigations and making release decisions under TFC §53.01 unless another staff member is designated to do so by the juvenile board  
7) taking a child into custody as authorized by TFC §§52.01(a)(4), 52.01(a)(6), or 52.015  
8) serving as the designated inter-county transfer officer and performing the duties required by TFC §51.072

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9) referring a child to a local mental health or mental retardation authority as required by TFC §54.0408  
10) explaining to the juvenile and to the juvenile's parent, guardian, or custodian, the following information:  
    (A) who will have access to the juvenile's record; and  
    (B) under what circumstances that record may be eligible for restricted access or sealing  
*TFC §58.209*  
11) providing the juvenile with a written copy of the explanation in paragraph (10)

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**SPECIAL PROTECTIONS FOR JUVENILE RESPONDENTS**

*For all to be aware of-*

- Confidentiality of records
- Limitations on collecting and maintaining information about juveniles
- Court can limit public access to hearings
- Special provision for sex offender registration

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**IMPORTANT TENSION BETWEEN PARTIES**

*The importance of operating within the scope of authority-*

- Probation Officers & Prosecutors
- Probation Officers & Defense Attorneys
- Defense Attorneys & Prosecutors
  - Judges & All of the Above

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**LAST NOTE**

- Be involved in *Regionalization* as this will impact the way that secure correctional commitment looks like in Texas
- Study, make your voices heard and weigh in so that Texas can build on the past and create the best system over this next wave of juvenile reform
- You all are the experts in this work and as an expert with important experiences and viewpoints, your involvement can be viewed as an ethical responsibility

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Thanks!  
Questions or Comments?

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